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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,253	04/01/2004	Julio A. Abusleme	108910-00129	6955

4372 7590 11/27/2007
ARENT FOX LLP
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EXAMINER

ZEMEL, IRINA SOPJIA

ART UNIT	PAPER NUMBER
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1796

NOTIFICATION DATE	DELIVERY MODE
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11/27/2007

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com
IPMatters@arentfox.com
Patent_Mail@arentfox.com

Office Action Summary

Application No.

10/814,253

Applicant(s)

ABUSLEME ET AL.

Examiner

Irina S. Zemel

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7 and 10-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,10-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7, 10-16 and 18-24 are rejected under 35 U.S.C. 103(a) as being unpatentable US Patent publication 20010003124 to Zolotnitsky et al., (hereinafter "Zolotnitsky").

The rejection stands as per reason of record previously stated as applicable to claims 6 and 8.

As previously discussed, the reference expressly discloses 90 mole % of CTFE in [0024], and further expressly discloses up to 15 % of fillers such as PTFE. The applicants arguments that the reference excludes 90 mole % of CFTE in the copolymer are not convincing as such amount is expressly disclosed in the reference. Thus, choosing all the claimed ratios and amounts from expressly disclosed ranges would have been obvious in the absence of unexpected results that can be attributed to the claimed numerical limitations.

The invention as claimed thus, would have been clearly obvious from the disclosure of the Zolotnitsly reference.

Claim Rejections - 35 USC § 103

Claims 1-5, 7, 10-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zolotnitsky in combination with US Patent 6,107,393 to Abusleme et al., (of record, hereinafter "Abusleme '393").

The rejection stands as per reason of record.

Response to Arguments

Applicant's arguments filed 9-10-2007 have been fully considered but they are not persuasive. The applicants main new argument is that the claims as amended recite the language "consisting of", which, according to the applicants arguments, preclude the presence of ethylene. This arguments is not persuasive. While the recited language "consisting of" does limit the components of the claimed compositions to the two mandatory components a and b, and one optional component c, the claimed language "consisting of" has absolutely no excluding effect of the actual composition of the recited component a. The claimed component a is still recited as a chlorotrifluoroethylene (CTFE) polymer **"containing"** some amount of CTFE. This language allows for the presence of **any** co-monomers in the CTFE polymer in addition to the required CTFE co-monomer.

In the previous office action the examiner addressed this point and, as stated by the applicants on page 7 of their response, the examiner acknowledged the fact that the copolymers disclosed in Zolotnitsky require the presence of ethylene co-monomer. This is still so, and the copolymers disclosed in Zolotnitsky necessarily require the presence of ethylene co-monomer. However, the claimed copolymer, or CTFE polymers that containing one required co-monomer, i.e., CTFE, do NOT, contrary to the applicants assertion, preclude the presence of such co-monomer. As stated above, this point was addressed in great detail in the previous office actions, and the claim language, even as amended, while precluding additional components in the

composition, still does not preclude the presence of ethylene as a comonomer in the claimed polymer. This is a matter of a simple claim interpretation that is well established by the courts, and it is completely proper for the examiner to interpret the claimed copolymer as open to ANY additional monomers, including ethylene.

All other argument, i.e., the arguments that the claimed invention solves a technical problem, which is to find CTFE based copolymer compositions that can be foamed without using additional foaming agents, have been earlier presented and have been answered by the examiner in the previous office actions. Once again, the patentability of a composition, according to US practice, is based on what the composition is, and not what technical problem is solved. The composition as claimed is a two component (optionally with another inert components of known function) composition containing a copolymer and a second component, namely a nucleating agent (specified in claim 4 as PTFE). Such compositions are, again, would have been clearly obvious from the disclosure of Zolotnitsky (alone or in combination with the secondary reference.). Once again, whether Zolotnitsky recognized the technical problem solved by the applicants or whether the Zolotnitsky reference named the identical compound (Polymist), the same name as the applicant, i.e., nucleating agent, is irrelevant, as irrelevant is the presence of additional components in the compositions of Zolotnitsky, unless clearly shown that the compositions of Zolotnitsky are INCAPABLE of being foamed or the foams obtained from compositions of Zolotnitsky have so different properties that the claimed foam (and that would be only applicable to the foam claims, not the foamable composition claims) properties are unexpected.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

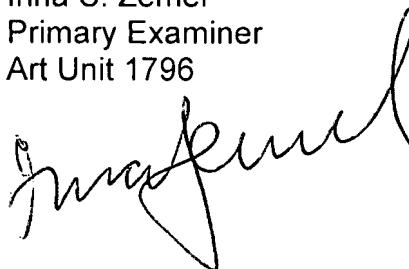
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Application/Control Number:
10/814,253
Art Unit: 1796

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Irina S. Zemel
Primary Examiner
Art Unit 1796

A handwritten signature in black ink, appearing to read 'Irina S. Zemel', written in a cursive style.

ISZ